

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.831 of 2015
and
O.A.Nos.1108 to 1110 of 2015

1.Vennila Clothing Company,
rep by its Partner Mr.R.Nagarajan @ K.R.Nagarajan,
Branch at :
Ramraj Cotton,
100, Pondy Bazar,
Chennai-600 017.

2.R.Nagarajan @ K.R.Nagarajan,
S/o.S.Ramasamy,
8,Sengunthapuram 1st Street,
Mangalam Road,
Tirupur-641 604.

.. Plaintiffs

Vs.

1.ARRS Silks,
A Partnership Firm,
No.2,Old Bangalore Road,
Hosur-635 109
rep by its Partner S.Ravichandran.

2.S.Ravichandran,
No.2, Old Bangalore Road,
Hosur-635 109.

.. Defendants

This Civil Suit is preferred, under Order IV Rule 1 of O.S. Rules read with Order VII Rule 1 of CPC and Section 27, 28, 29, 134 and 135 of the Trade Marks Act, 1999 read with Sections 51, 55, 62 of the Copyright Act, 1957 seeking (a) a perpetual injunction restraining the defendants by themselves or their men, partners, proprietors, stockist, dealers, servants,

agents, franchisees, successors in interest, licensees, assignees, representatives Branches or any of them claiming through or under them from in any manner infringing the plaintiff's registered trademark 'RAMRAJ' / RAJARAM /RAJRAM /MINISTER COTTON' by use of the same or any identical, deceptively similar label 'RAJARAM's' or any identical or deceptively similar label with or without the expression MINISTER COTTON or in any other manner whatsoever;

(b) a perpetual injunction restraining the defendants by themselves or their men, partners, proprietors, stockiest, dealers, servants, agents, franchisees, successors in interest, licensees, assignees, representatives branches or any of them claiming through or under them from in any manner passing off or enabling passing off of the defendants goods under the label 'RAJARAM'S' with or without the expression MINISTER COTTON as and for that of the plaintiffs goods by use of the plaintiff's registered trademark 'RAMRAJ' / RAJRAM' / 'RAJARAMA' / 'MINISTER COTTON' or in any other manner whatsoever;

(c) a perpetual injunction restraining the defendants by themselves or their men, partners, proprietors, stockiest, dealers, servants, agents, franchisees, successors in interest, licensees, assignees, representatives, branches or any of them claiming through or under them from in any manner infringing the plaintiffs copyright over the artistic work, colour scheme, layout, get-up and lettering style, trade dress in the registered label 'RAMRAJ' by use of 'RAJARAM'S' label or any mark / label deceptively similar to that of the plaintiffs artistic work / label or by use of identical or deceptively similar trading style and /or artistic work in any other manner whatsoever;

(d) a perpetual injunction restraining the defendants by themselves or their men, partners, proprietors, stockiest, dealers, servants, agents, franchisees, successors in interest, licensees, assignees, representatives, branches or any of them claiming through or under them from in any manner violating the statutory and common law rights of the plaintiffs by use of identical or deceptively similar Trade dress by the defendants with or without the

trademark 'RAJARAM'S' or any other deceptively similar trade mark in respect of the goods and services of the plaintiffs or by use of identical or deceptively similar label packing materials /cartons or in any other manner whatsoever;

(e) the defendants be ordered to surrender to the plaintiffs for destruction all goods, name boards, packing materials, printer bills, cartons, collar, tag, sachets, labels and other materials bearing the trademark 'RAJARAM'S' along with artwork which is identical with and/or deceptively similar to that of the plaintiff's registered trade mark label 'RAMRAJ /RAJARAM /RAJRAM/ MINISTER COTTON';

(f) the defendants be ordered to prepare and submit an account of profits made by them by the unlawful use of the trademark label / trade dress of the plaintiffs and thereafter to pass a final decree upon ascertaining the accounts, in favour of plaintiffs and against the defendants;

(g) the defendants be ordered to pay punitive damages for the unlawful act complained of;

(h) for the costs of the suit; and

(i) grant such other relief or reliefs as this court may deem fit and proper in the circumstances of the case.

For Plaintiffs : Mr.Satish Parasaran, Senior Advocate
for Mr.K.Rajasekaran

For Defendants : Mr.B.Kumar, Senior Advocate
for Mr.S.Ramachandran

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JUDGMENT

Mr.Satish Parasaran, learned Senior Advocate leading Mr.K.Rajasekaran, counsel on record for the two plaintiffs is before this Commercial Division. To be noted, there are two plaintiffs in the suit. Plaintiff

No.1, I am informed, is a partnership firm and plaintiff No.2 is an individual, who is one of the partners in plaintiff No.1 firm.

2 Mr.B.Kumar, learned Senior Advocate leading Mr.S.Ramachandran, counsel on record for both defendants is before this Commercial Division.

3 The crux and gravamen of this lis is that plaintiffs are Proprietors of registered trademarks Ramraj / Rajaram / Rajram / Minister Cotton and defendants are allegedly infringing the trademarks of plaintiffs, besides passing off qua label, infringing the copyright of plaintiffs in artistic work, colour scheme, layout, get-up, lettering style and trade dress in their registered label. There is also a complaint of passing off qua trade dress. The entire complaint of infringement of trademark, infringement of copyright, passing off qua label and passing off qua trade dress is predicated on the allegation that defendants are using the mark 'Rajarams'.

4 In another litigation between the same parties, i.e., C.S.No.775 of 2017, defendants have filed an affidavit dated 11.12.2017 in O.A.No.8280 of 2017 (vacate injunction application) and paragraph 3 of the said affidavit is of relevance. That portion of paragraph 3 which is of relevance reads as follows :

“3.....The plaintiff objected to the same and filed C.S.No.831/2015 on the file of this Hon'ble Court and obtained an order of injunction. We were advised not to use the same for a variety of reasons. Therefore, we stopped selling under the name Rajrams.”

5 Learned Senior Advocate for defendants submits on instructions that defendants stand by their averment, that they have stopped using 'Rajrams' and they will not use it henceforth.

6 This puts an end to the crux of the controversy between the parties in this suit.

7 Before, I proceed further, it is necessary to extract the prayer paragraph in the suit which reads as follows :

"The Plaintiffs therefore prays that this Hon'ble Court may graciously be pleased to grant a Judgement and Decree on the following terms :

a) A perpetual injunction restraining the Defendants by themselves or their men, partners, proprietors, stockist, dealers, servants, agents, franchisees, successors in interest, licensees, assignees, representatives Branches or any of them claiming through or under them from in any manner infringing the plaintiff's registered trademark 'RAMRAJ / RAJARAM /RAJRAM /MINISTER COTTON' by use of the same or any identical, deceptively similar label 'RAJARAM's' or any identical or deceptively similar label with or without the expression MINISTER COTTON or in any other manner whatsoever;

b)A perpetual injunction restraining the Defendants by themselves or their men, partners, proprietors, stockiest, dealers, servants, agents, franchisees, successors in interest, licensees, assignees, representatives branches or any of them claiming through or under them from in any manner passing off or enabling passing off of the Defendants goods under the label 'RAJARAM'S' with or without the expression MINISTER COTTON as and for that of the plaintiffs goods by use of the plaintiff's registered trademark 'RAMRAJ' / RAJRAM' / 'RAJARAMA' / 'MINISTER COTTON' or in any other manner whatsoever;

(c) A perpetual injunction restraining the defendants by themselves or their men, partners, proprietors, stockiest, dealers, servants, agents, franchisees, successors in interest, licensees, assignees, representatives, branches or any of them claiming through or under them from in any manner infringing the plaintiffs copyright over the artistic work, colour scheme, layout, get-up and lettering style, trade dress in the registered label 'RAMRAJ' by use of 'RAJARAM'S' label or any mark / label deceptively similar to that of the Plaintiffs artistic work / label or by use of identical or deceptively similar trading style and /or artistic work in any other manner whatsoever;

(d) A perpetual injunction restraining the Defendants by themselves or their men, partners, proprietors, stockiest, dealers, servants, agents, franchisees, successors in interest, licensees, assignees, representatives, branches or any of them claiming through or under them from in any manner violating the statutory and common law rights of the Plaintiffs by use of identical or deceptively similar Trade dress by the Defendants with or without the trademark 'RAJARAM'S' or any other deceptively similar trade Mark in respect of the goods and services of the Plaintiffs or by use of identical or deceptively similar label packing materials /cartons or in any other manner whatsoever;

(e) the Defendants be ordered to surrender to the Plaintiffs for destruction all goods, name boards, packing materials, printer bills, cartons, collar, tag, sachets, labels and other materials bearing the Trademark 'RAJARAM'S' along with artwork which is identical with and/or deceptively similar to that of the plaintiff's registered trade mark label 'RAMRAJ /RAJARAM /RAJRAM/ MINISTER COTTON';

(f) The Defendants be ordered to prepare and submit an account of profits made by them by the unlawful use of the Trade mark label / trade dress of the Plaintiffs and thereafter to pass a final decree upon ascertaining the accounts, in favour of plaintiffs and against the Defendants;

- (g) The Defendants be ordered to pay punitive damages for the unlawful act complained of;
- (h) For the costs of the suit; and
- (i) grant such other relief or reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

8 In the light of the aforesaid averments and in the light of the aforesaid stand, Mr. Satish Parasaran, learned Senior Advocate appearing for plaintiffs very fairly submits on instructions that plaintiffs shall give up the prayers in sub-paragraphs (e), (f), (g), (h) and (i) in the aforesaid prayer paragraph. Equally, Mr. B. Kumar, learned Senior Advocate on instructions submits that prayers contained in sub-paragraphs (a), (b), (c) and (d) of prayer paragraph extracted supra can be decreed.

9 The aforesaid submissions are recorded. On the basis of the aforesaid submissions and by consent of both parties, the main suit itself is decreed, wherein and whereby there shall be a decree in terms of sub-paragraphs (a), (b), (c) and (d) of plaintiff prayer paragraph and sub-paragraphs (e), (f), (g), (h) and (i) of plaintiff prayer paragraph stand given up.

10 The suit is disposed of on the above terms. There shall be no order as to costs. Consequently, connected applications are closed.

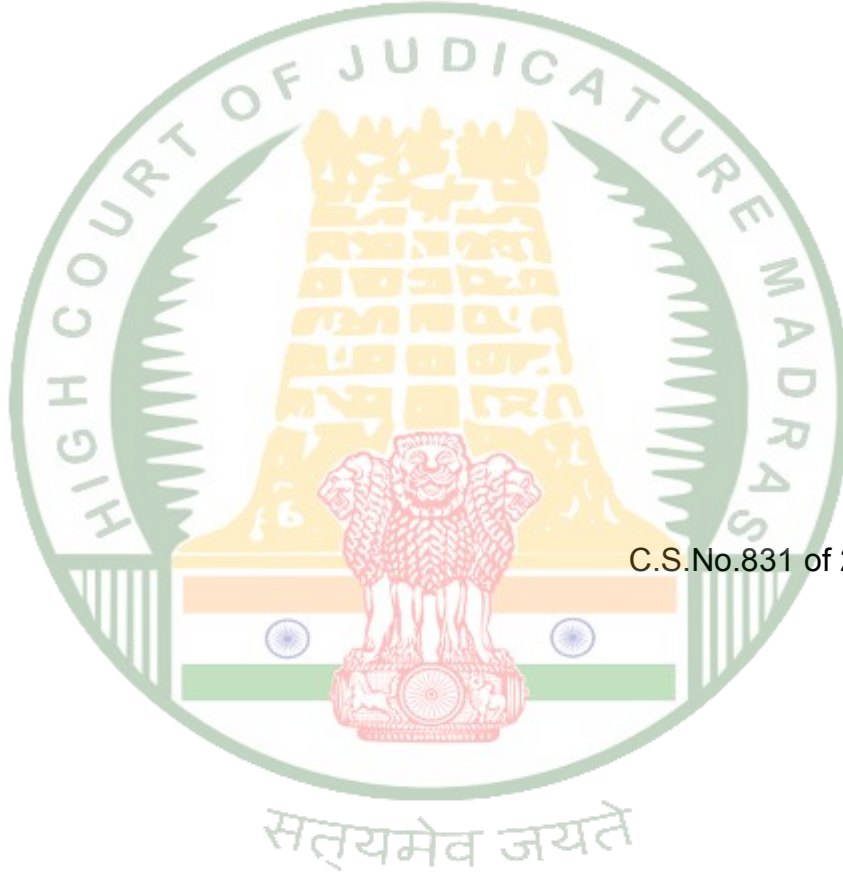
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Index : Yes/No

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M.SUNDAR, J.

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